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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,059	12/29/2000	James R. Baker JR.	UM-04491	8985
<div>23535      7590      07/12/2007</div> <div>MEDLEN &amp; CARROLL, LLP</div> <div>101 HOWARD STREET</div> <div>SUITE 350</div> <div>SAN FRANCISCO, CA 94105</div>				
<div>EXAMINER</div> <div>FUBARA, BLESSING M</div>				
<div>ART UNIT      PAPER NUMBER</div> <div>1618</div>				
<div>MAIL DATE      DELIVERY MODE</div> <div>07/12/2007      PAPER</div>				

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/751,059

Applicant(s)

BAKER ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 186-199 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 186-199 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/23/07</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Examiner acknowledges receipt of IDS, amendment and remarks filed 4/23/07.

Examiner also acknowledges receipt of Notice of Change of Address filed 5/16/07. Claim 186 is amended. Claims 186-199 are pending.

#### ***Response to Arguments***

**Previous rejections that are not reiterated herein have been withdrawn.**

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 186-188, 191, 193, 194 and 197-199 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Asculai et al. (US 4,020,183).

Asculai discloses inactivating herpes simplex virus in humans by applying the infected area an effective amount of oil-in-water emulsion that contains surfactants such as polysorbate 20, which is TWEEN 20 (column 1, line 61; Table 1), halogen containing compound such as cetylpyridinium chloride or benzalkonium chloride (column 1, lines 16 and 17), mineral oil of petrolatum (column 2, lines 48 and 49), alcohols (line 41), the formulation is in the form of cream or lotion (column 2, line 46). Asculai describes method of inactivating the herpes

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simplex virus in humans by applying the composition to the affected areas (claims 1-6) and while Asculai does not use the term decontamination, inactivation naturally leads to decontamination so that Asculai inherently decontaminates surfaces of the human. In the alternate, it is prima facie obvious that application of the oil containing surfactant composition directly to affected area is expected to decontaminate the are by inactivating the virus.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 186-199 are rejected under 35 U.S.C. 103(a) as being unpatentable over Libin (US 5,855,872) in view of Stroud et al. (US 6,231,837).

Libin discloses method of treating diseased tissues that results from herpes simplex virus infection, by applying an oil in water emulsion that contains cetylpyridinium chloride, sterol

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alcohol, emulsifying agent and mineral oil (abstract; column 1, lines 42, 47-55; column 2, lines 26-64; column 3, line 25 to column 4 line 29) without specifically mentioning a human while disclosing topical application. Stroud teaches an oil in water emulsion (column 17, lines 51 and 52; column 18, lines 6 and 7; column 22, line 14) that is a self tanning composition (column 7, lines 28,29; column 11, line 26; column 12, lines 29 and 30) that contains glycerol (column 7, lines 39 and 40; column 15, lines 41 and 42), ethanol (column 11, line 41), antimicrobial or antifungal agents (column 18, lines 43-46), preservatives or chelating agent such as EDTA helps maintain the ionic strength of the composition (column 19, lines 26, and 54-59), antiviral agent for treating herpes simplex or herpes zoster or chickenpox (column 21, lines 7-9), emollients such as castor oil or soybean oil (column 21, lines 29-32) and surfactant such as polysorbate 20 (column 24, lines 30, 50 and 51), which is TWEEN 20; the oil in water emulsion of Stroud is formulated as cream, lotion or ointment (column 17, lines 31, 32). Stroud teaches that the self-tanning formulations are approved for use with humans (column 2, lines 61 and 65). Both compositions have utility in the treatment of herpes simplex virus via topical route so that a combination of the compositions of Stroud and Libin will yield a composition that would be effective in treating herpes simplex virus. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the composition of Stroud and Libin with the motivation that topically applying the composition to affected areas of a person in need thereof, and specifically to humans in view of Stroud, would treat the affected areas of herpes simplex. Treating the virus results from inactivating the virus and thus leads to decontaminating the affected area.

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The application to human the combined composition that contains alcohol, surfactant, oil and the cetylpyridinium chloride meets claims 186-188 and 197. The presence of the ETDA meets claims 189 and 190. The presence of oil or soybean oil meets claims 191 and 192. Polysorbate 20, which is TWEEN 20 meets claims 193 and 194. Ethanol and glycerol present in the formulation meets claims 195 and 196. The topical application of the formulation in the form of ointment or lotion or cream meets claims 198 and 199.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

7. Claims 186-199 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what "surface of a human" means in the context of the claims.

**Applicant presented no argument as to why the claims are not indefinite.**

**No Claim is allowed.**

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

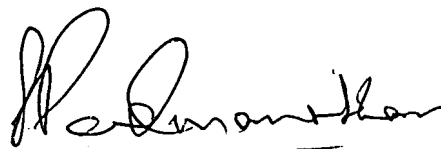
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 5:30 p.m. (Monday to Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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